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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. *2012-101*

STATEMENT OF ISSUES

13 **JOZELLE DENISE WHITMIRE, AKA**
14 **JOZELLE AMANANT or JOZELLE**
WHITMIRE-MCGOVERN
15 **1918 Valencia Avenue**
Santa Ana, CA 92706

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about December 10, 2010, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for licensure by exam for a Registered Nurse License
25 from Jozelle Denise Whitmire, aka Jozelle Amanat or Jozelle Whitmire-McGovern (Respondent).
26 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on March 17, 2011.
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1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
2 an order granting probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under the provisions of Section 1203.4 of the Penal Code.

4 "...

5 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
6 would be grounds for suspension or revocation of license.

7 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
8 substantially related to the qualifications, functions, or duties of the business or profession for
9 which application is made.

10 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
11 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
12 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
13 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
14 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
15 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
16 Section 482."

17 7. Section 482 of the Code states:

18 "Each board under the provisions of this code shall develop criteria to evaluate the
19 rehabilitation of a person when:

20 "(a) Considering the denial of a license by the board under Section 480; or

21 "(b) Considering suspension or revocation of a license under Section 490.

22 "Each board shall take into account all competent evidence of rehabilitation furnished by
23 the applicant or licensee."

24 8. Section 2761 of the Code states:

25 "The board may take disciplinary action against a certified or licensed nurse or deny an
26 application for a certificate or license for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

28 "...

1 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be
3 conclusive evidence thereof."

4 9. Section 2762 of the Code states:

5 "In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
7 chapter to do any of the following:

8 ". . .

9 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
10 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
11 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
12 himself or herself, any other person, or the public or to the extent that such use impairs his or her
13 ability to conduct with safety to the public the practice authorized by his or her license.

14 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
15 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
16 or the possession of, or falsification of a record pertaining to, the substances described in
17 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
18 thereof."

19 REGULATORY PROVISIONS

20 10. California Code of Regulations, title 16, section 1444, states:

21 "A conviction or act shall be considered to be substantially related to the qualifications,
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
24 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

25 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
26 subdivision (d) of Penal Code Section 11160.

27 "(b) Failure to comply with any mandatory reporting requirements.

28 "(c) Theft, dishonesty, fraud, or deceit.

1 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
2 Penal Code.”

3 11. California Code of Regulations, title 16, section 1445 states:

4 “(a) When considering the denial of a license under Section 480 of the code, the board, in
5 evaluating the rehabilitation of the applicant and his/her present eligibility for a license will
6 consider the following criteria:

7 “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds
8 for denial.

9 “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
10 consideration as grounds for denial which also could be considered as grounds for denial under
11 Section 480 of the code.

12 “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to
13 in subdivision (1) or (2).

14 “(4) The extent to which the applicant has complied with any terms of parole,
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 “(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .”

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 **(Two 1995 Criminal Convictions for DUI on May 5, 1995 and May 16, 1995)**

19 12. Respondent's application is subject to denial under Code section 480, subdivision
20 (a), and section 2761, subdivision (f), in that she was convicted of a crime that is substantially
21 related to the qualifications, duties, and functions of a registered nurse and which, if done by a
22 licentiate of the business or profession in question, would be grounds for suspension or revocation
23 of her license. The circumstances are as follows:

24 a. In combined criminal proceedings entitled *People of the State of California*
25 *v. Jozelle Whitmire*, in Orange County Superior Court, cases number 95CS03975 and
26 95CS03978, Respondent was convicted on her plea of guilty to violating two counts of Vehicle
27 Code section 23152, subdivision (a), driving under the influence of alcohol; two counts of
28 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)

1 of .08 or more, and one count of Vehicle Code section 23246, subdivision (a), authorized and
2 mandatory installation of ignition interlock device, all misdemeanors.

3 b. As a result of the convictions, Respondent was sentenced to 48 hours in jail and
4 then an 8 week home monitoring system, she was issued a restricted drivers license so she could
5 still work, but she had to drive with an ignition lock, she was ordered to pay fines, and she was
6 placed on an 18 month diversion program.

7 c. Respondent wrote a letter which she attached to her application to address the
8 facts that led to the convictions. She wrote that on May 5, 1995, she was under some emotional
9 distress due to a family situation. A few nights a week she would drive to a local bar with a
10 girlfriend. On May 5, 1995, while driving home from the bar, she was pulled over and cited for
11 driving under the influence. Again, eleven days later, Respondent was again pulled over while
12 driving home from the bar and cited for driving under the influence.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(December 21, 2005 Criminal Conviction for DUI on September 27, 2005)**

15 13. Respondent's application is subject to denial under Code section 480, subdivision
16 (a), and section 2761, subdivision (f), in that she was convicted of a crime that is substantially
17 related to the qualifications, duties, and functions of a registered nurse and which, if done by a
18 licensee of the business or profession in question, would be grounds for suspension or revocation
19 of her license. The circumstances are as follows:

20 a. On or about December 21, 2005, in criminal proceeding entitled *People of*
21 *the State of California v. Jozelle Whitmire*, in Orange County Superior Court, case number
22 05CM08882 Respondent was convicted on her plea of guilty to violating Vehicle Code section
23 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more, a
24 misdemeanor.

25 b. As a result of the conviction, on or about January 29, 2009, Respondent
26 was sentenced to three years informal probation, ordered to complete a nine-month Level 2 First
27 Offender Alcohol Program and a MADD Victim's Impact Panel, and to pay fines and fees in the
28 amount of \$1,536.50.

1 c. The facts that led to the conviction are that in the evening of September 27,
2 2005, Respondent was driving home from a party at the Elks lodge when she stopped at a drive-in
3 restaurant. The woman in the car in front of her claimed that Respondent had bumped her car
4 twice. Respondent denied ever bumping the car and the Santa Ana Police were called. When the
5 police attempted to speak with Respondent she hid her face and started to cry hysterically, so they
6 placed her in the back of the police car. The police found no evidence of a collision.
7 Respondent's speech was slurred, her gait was unsteady, she was staggering, there was a
8 moderate odor of alcohol on her breath, and Respondent appeared disheveled. The police asked
9 Respondent if she had been drinking. Respondent admitted that she had had six to twelve beers.
10 Respondent was too impaired to submit to field sobriety tests so she was taken to the Santa Ana
11 Jail where she provided a blood sample that led to the filing of the charges against her.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

14 14. Respondent's application is subject to denial under Code section 480, subdivisions (a)
15 and (3)(A), and section 2762, subdivision (b), in that twice in May of 1995 and once in December
16 of 2005, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
17 injurious to herself and the public when she operated a motor vehicle while under the influence of
18 alcohol, as detailed in paragraphs 12 and 13, above.

19 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

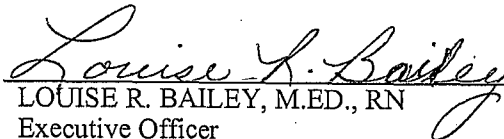
21 15. Respondent's application is subject to denial under Code section 480, subdivision (a),
22 and section 2762, subdivision (c), in that twice in May of 1995 and once in December of 2005,
23 Respondent was convicted of criminal offenses involving the consumption of alcohol as detailed
24 in paragraphs 12 and 13, above.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Registered Nursing issue a decision:
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- 1 1. Denying the application of Jozelle Denise Whitmire, aka Jozelle Amanat or Jozelle
2 Whitmire-McGovern for a Registered Nurse License;
3 2. Taking such other and further action as deemed necessary and proper.

4
5 DATED: 8-15-11


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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